IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

TUESDAY, THE 14TH AUGUST 2007 / 23RD SRAVANA 1929

CRL.A.No. 1737 of 2003()

AGAINST THE ORDER IN CRLP.431/2003 Dated 07/10/2003 ST.216/2001 of JUDL.MAGISTRATE OF FIRST CLASS-II(FOREST OFFENCES), MANJERI

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APPELLANT: COMPLAINANT

P.MOHIYUDHEEN S/O. ABOOBACKAR HAJI,
POONGADAN HOUSE, TIRURANGADI TALUK,
MALAPPURAM DISTRICT

BY ADV. SRI.M.K.DAMODARAN
SRI.SOJAN MICHAEAL

RESPONDENTS: ACCUSED AND STATE

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1. T.K.KUNHAMMED S/O. KUNHABDULLA,
THAYYIL KAPPINTAVIDA, "THAYIL", HAVANKUNI POST,
VILAYAPALLI, VADAKARA.

2. THE STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM

R1-BY ADV. SRI.K.SHIBILI NAHA
R2- BY P.P.SRI.PUZHAKKARA MOHEMMED

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 14/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. THANKAPPAN, J.

CRL.A.NO.1737 OF 2003

Dated this the 14th day of August, 2007.

JUDGMENT

Appellant is the complainant in S.T.No.216/2001 on the file of the Judicial Magistrate of First Class – II (Forest Offences), Manjeri. As per the complaint filed before the court, it was specifically alleged by the appellant/complainant that the 1st respondent and himself are known each other for the past so many years and in their business transactions, the 1st respondent owes an amount of Rs. Seven lakhs to the appellant and for the discharge of the said amount, the 1st respondent had issued Ext.P1 cheque dated 10.03.2000. When the cheque was presented for encashment, the same was dishonoured on the ground of insufficiency of fund with the account of the 1st respondent. On getting intimation regarding dishonouring of the cheque, the appellant had issued a notice to the 1st respondent and in spite of the receipt of that notice, the amount covered by the cheque has not been repaid. Hence, the complaint filed alleging that the 1st respondent had committed an offence punishable under Section 138 of the N.I.Act.

2. To prove the case against the 1st respondent, the appellant/complainant himself was examined as PW1 and produced Exts.P1 to P9. After closing the evidence adduced for and on behalf of the appellant/complainant, the 1st respondent was questioned under Section 313 of the Code of Criminal Procedure. Denying the allegations in the complaint and the transactions alleged therein, the 1st respondent had stated that the cheque in question has not been issued in discharge of any legally enforcible debt to the appellant/complainant whereas, three other blank cheques were issued to one Rabiya, wife of one Kunhi Ahammed Haji for starting a super market and a hotel at Dubai on a partnership basis between the 1st respondent and the said Kunhi Ahammed Haji. Out of the said cheques issued in the name of Smt. Rabiya, one of the cheques was misused by the appellant for filing the complaint. To prove that case, the 1st respondent had examined two witnesses and relied on Exts.D1 to D5. After considering the entire evidence, the trial court found that the appellant/complainant miserably failed to prove that the cheque in question was issued in favour of the appellant for the discharge of any legally enforcible debt. The trial court also found that the case set up by the 1st respondent was more probable. Holding so,

the trial court acquitted the 1st respondent. Against that judgment, this appeal has been filed.

2. This Court heard the learned counsel appearing on either side and perused the records made available to this Court. The learned counsel appearing for the appellant submitted that the trial court actually misread the evidence adduced by the appellant and had considered the case set up by the 1st respondent without considering the circumstances under which the cheque in question has been given to the appellant. Further, it is contended that the trial court ought not to have considered the evidence of DW1, a lawyer alleged to have been issued the notice to the 1st respondent in connection with dishonoure of another cheque coming under the same series alleged to have been issued by the 1st respondent.

The specific case set up by the appellant before the court was that he had business transaction with the 1st respondent including sale of arecanut and he used to give arecanut to the 1st respondent by purchasing the same from different persons and in the above transaction, an amount of Rs. Seven lakhs became due

from the 1st respondent. But, the appellant had not produced any accounts showing the business transactions between the appellant and the 1st respondent. Even, the appellant had not produced any paper showing the business transactions as narrated in the complaint. The trial court also found that as per the evidence of DW1, a lawyer of the locality, Ext.D1 notice to the 1st respondent was issued on getting intimation regarding dishonouring of Cheque No.706509. That document would also shows that the cheque in question covered by the notice issued by DW1 was also issued by the 1st respondent in the name of Rabiya, wife of Kunhi Ahammed Haji. In the above circumstances, the trial court found that the cheque in question covered by Ext.D1 notice and the cheque in question covered in the present complaint were also in the same serial and the four cheques namely 706507 to 706510 are from the same account of the 1st respondent.

In the above circumstances, the finding entered by the trial court is on evidence and this Court is of the opinion that the appellant had not proved any circumstance or reason to reverse the finding of the trial court to have any compelling

circumstance to interfere with the judgment of the trial court. Accordingly, the appeal stands dismissed as merit less.

K. THANKAPPAN, JUDGE.

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